

AMENDED IN ASSEMBLY JUNE 29, 2004
AMENDED IN ASSEMBLY MAY 24, 2004
AMENDED IN SENATE JANUARY 5, 2004

SENATE BILL

No. 391

Introduced by Senators Florez and Escutia

February 20, 2003

An act to add Chapter 3.5 (commencing with Section 105230) to Part 5 of Division 103 of the Health and Safety Code, relating to public health, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 391, as amended, Florez. Pesticide drift exposure.

~~Existing~~

Under existing law, the Department of Pesticide Regulation is charged with enforcing pesticide laws and regulations. Existing law establishes the Department of Pesticide Regulation Fund.

Existing law establishes reporting requirements relating to pesticide poisoning, and requires the Office of Environmental Health Hazard Assessment to develop and implement a program to alert physicians and others regarding symptoms, diagnosis, and treatment.

This bill would establish the Pesticide Drift Exposure Prevention and Response Act to be administered by the ~~office~~ department for the purposes of providing education and training and reimbursement to health care providers for the costs associated with ~~illnesses or conditions related to~~ nonoccupational exposure to pesticide drift.

The bill would authorize the Director of Pesticide Regulation to impose civil penalties against a person violating pesticide labeling, pesticide drift, and pesticide use requirements set forth in the Food and

Agricultural Code. The bill would establish the Medical Reimbursement Account within the fund, and provide for the direct deposit into the account of the civil penalty proceeds. The bill would, upon appropriation by the Legislature, make moneys in the account available to the department for expenditure for actual and projected medical costs associated with a pesticide exposure incident.

~~This bill would require the office to develop related educational materials for the public and to develop instructional materials a program of medical education and training for health care providers and emergency medical services personnel related to pesticide drift exposure. This bill would require the office to establish protocols for these purposes and would require county health officers to develop or amend the emergency response plans to conform to the protocols the certified uniform program agency or administering agency to amend the area plan for emergency response accordingly. By requiring local agencies to comply with these requirements, this bill would impose a state-mandated local program.~~

~~This bill would require the office department to establish, assess, and collect a drift fee to be imposed upon the manufacturers and wholesalers of pesticides and would deposit the proceeds into the fund and from which annual deposits would be made into the Education and Administration Account that would be established by this bill within the fund. The bill would continuously appropriate the fund moneys in the account to the office department to provide reimbursement of health care costs of persons exposed to nonoccupational pesticide drift exposure and for state and local agency costs associated with this bill.~~

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

~~This bill would appropriate moneys from the Pesticide Drift Exposure Prevention and Response Fund to the office for reimbursement of local agency costs associated with this bill.~~

With regard to other nonreimbursed mandates, if any, this bill would provide that, if the Commission on State Mandates determines that the bill contains other nonreimbursed costs mandated by the state,

reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 3.5 (commencing with Section
2 105230) is added to Part 5 of Division 103 of the Health and Safety
3 Code, to read:

4
5 CHAPTER 3.5. PESTICIDE DRIFT EXPOSURE PREVENTION AND
6 RESPONSE
7

8 105230. (a) This chapter shall be known, and may be cited,
9 as the Pesticide Drift Exposure Prevention and Response Act.

10 (b) The Legislature finds and declares all of the following:

11 (1) In prior years pesticide laws and regulations including use
12 restrictions, pesticide posting requirements, buffer zones, and oral
13 notifications have not adequately prevented all pesticide drift
14 exposures.

15 (2) Unfortunately, large scale pesticide exposures on and off of
16 the agricultural fields have continued to take place, primarily from
17 natural offsite airborne movement or “drift” of pesticides.

18 (3) Pesticide drift incidents have repeatedly been inadequately
19 handled by emergency response personnel and health care
20 providers and inappropriate treatment of the victims of exposure
21 has resulted.

22 (4) Lack of coordination among county and state agencies,
23 little training in diagnosis and treatment of illness or conditions
24 resulting from pesticide drift exposure, and lack of related funding
25 have all contributed to the problem.

26 (5) The purpose of this chapter is to ensure that the victims of
27 pesticide drift exposure receive immediate, comprehensive, and
28 respectful attention during and following pesticide drift exposure
29 incidents.

30 (c) For the purposes of this chapter:

31 (1) “Office” means the Office of Environmental Health
32 Hazard Assessment.

(2) “Department” means the Department of Pesticide Regulation.

(3) “*Certified Unified Program Agency*” or “CUPA” means the agency certified by the Secretary for Environmental Protection to implement the unified program specified in Chapter 6.11 (commencing with Section 25404) of Division 20, within a jurisdiction.

(4) “Administering agency” means the local agency authorized, pursuant to Section 25502.

(5) “Agency” means the California Environmental Protection Agency.

(6) “Pesticide drift” means the physical movement of pesticide droplets, particles, or gas-phase chemicals away from the application site during and after a pesticide application. “Pesticide drift” includes spray droplets created during a pesticide application, gas-phase chemicals from fumigant applications or volatilization of applied pesticides, airborne dusts or powders, and pesticide-contaminated dust particles.

~~(4) “A person exposed to pesticide drift” means a person who meets all of the following criteria:~~

~~(A) The person was within a one-mile radius of a pesticide drift incident during the pesticide drift incident, or within a reasonable time after the incident.~~

~~(B) The exposure was a nonoccupational exposure, and the person has an illness or condition that was caused or likely caused by the nonoccupational exposure to pesticide drift.~~

~~(5) “Nonoccupational” means that the person exposed to the pesticide drift was not at the time of the exposure engaged in application of the pesticide or employed performing work in the fields or on the property upon which the pesticide was applied.~~

~~(6) “Fund” means the Pesticide Drift Exposure Prevention and Response Fund established pursuant to Section 105237.~~

~~(7) “Medical Reimbursement Account” means the Medical Reimbursement Account established within the fund pursuant to paragraph (1) of subdivision (d) of Section 105237.~~

~~(8) “Education and Administration Account” means the Education and Administration Account established within the fund pursuant to paragraph (2) of subdivision (d) of Section 105237.~~

~~105231. (a) The office shall administer this chapter.~~

~~(b) The office shall, in conjunction with the department and the~~

(7) “Nonoccupational exposure to pesticide drift” means that the person exposed to the pesticide was not at the time of the exposure performing work as an employee.

(8) “Fund” means the Department of Pesticide Regulation Fund.

(9) “Medical Reimbursement Account” means the account established within the fund pursuant to subdivision (d) of Section 105231.

(10) “Education and Administration Account” means the account established within the fund pursuant to subdivision (b) of Section 105237.

105231. (a) The department shall administer this chapter.

(b) The department, in conjunction with the State Department of Health Services, shall by July 1, 2005, adopt regulations to coordinate a process for reimbursement of local emergency medical services response costs and health care provider costs, including, but not limited to, adoption of a specific reimbursement schedule.

(c) The reimbursement schedule shall set forth a procedure and reimbursement rates to reimburse local emergency medical services providers and health care providers for their costs of providing any of the following services for any illness or condition of a person exposed to a person as a result of nonoccupational exposure to pesticide drift:

(1) Emergency medical services, including, but not limited to, transportation services.

(2) Medical evaluation and diagnosis.

(3) Immediate and ongoing treatment for conditions related to the pesticide drift exposure.

(d) The Medical Reimbursement Account is hereby established within the Department of Pesticide Regulation Fund.

(e) The Director of Pesticide Regulation shall impose civil penalties against any person who violates Section 12971, 12972, or 12973 of the Food and Agricultural Code. The civil penalties shall be deposited into the Medical Reimbursement Account within the fund to be used, upon appropriation by the Legislature, to reimburse that account for actual and projected medical costs, including medical transport costs associated with a pesticide exposure incident as set forth in subdivisions (b) and (c).

1 105232. (a) The office shall develop and implement, in
2 cooperation with local health officers, *the State Department of*
3 *Health Services, Occupational Health Branch, directly affected*
4 *community members*, and state and local medical associations, a
5 program of medical education to alert physicians and surgeons,
6 interpreters, and other health care professionals to the symptoms,
7 diagnosis, treatment, and reporting of pesticide poisoning arising
8 from pesticide drift exposure, *and accessing information from the*
9 *pesticide application registry set forth in subdivision (a) of Section*
10 *105235.*

11 (b) The office shall consult with the Emergency Medical
12 Services Authority regarding the adequacy of emergency services
13 personnel training *in responding to pesticide drift* and shall
14 conduct annual training *for emergency personnel, poison control*
15 *centers, physicians, interpreters, and staff of emergency rooms,*
16 *clinics, and county agricultural and health departments* in the 15
17 counties where soil fumigant use is the highest, in all of the
18 following areas:

19 (1) The effects of, and the recognition of acute and chronic
20 health symptoms of, pesticide drift exposure.

21 (2) The proper treatment of pesticide drift exposure with an
22 emphasis on soil fumigants.

23 (3) Pesticide ~~drift exposure~~ *illness* reporting requirements and
24 procedures.

25 (4) Processes available for the reimbursement of the costs of
26 medical treatment related to pesticide drift exposure.

27 (5) The inclusion of a cultural competency component.

28 (6) ~~Awareness of the~~ *The* pesticide drift exposure component
29 of the local hazardous response plans.

30 (c) *The office shall recover its costs for the administration of*
31 *this section from the department.*

32 105233. (a) The office, the department, and the State
33 Department of Health Services shall jointly develop and distribute
34 educational materials for the public and for health care personnel
35 explaining symptoms and treatment of illnesses or conditions
36 related to pesticide drift exposure for each of the 10 pesticides that
37 present the greatest pesticide drift problem and each soil fumigant
38 used in California. The pesticide information shall be in a form that
39 is both understandable by, and accessible to, the intended
40 recipients.

(b) The office shall allocate funds, in the form of grants or contracts, to eligible state and local agencies, educational institutions, and nonprofit corporations to defray the cost of providing pesticide drift exposure training for emergency medical personnel, including, but not limited to, instructional supplies and trainee expense reimbursement.

(c) The office and the relevant state licensing agencies shall cooperate to establish continuing medical education courses and related training materials for physicians and surgeons and nurses regarding pesticide drift exposure.

~~105234. (a) The office~~

~~(d) The office shall recover its costs for the administration of this section from the department.~~

~~105234. (a) The agency with the advice and assistance of the department, the office, county agricultural commissioners, local health officers, and directly affected community members, shall by August 31, 2005, adopt emergency regulations establishing protocols for purposes establish minimum standard protocols for the purposes of this chapter.~~

(b) The protocols shall include, but not be limited to, all of the following:

~~(1) Protocols for establishing a pesticide application registry to serve as a clearinghouse for information regarding the date, time, pesticide, type of application, and specific location of application.~~

~~(2) Protocols for immediately obtaining information from the pesticide application registry regarding pesticide applications in the vicinity of any health complaints or requests for treatment which may indicate the occurrence of a pesticide drift exposure incident.~~

~~(3) Protocols for emergency response to pesticide drift exposure, including, but not limited to, procedures to provide immediate access to pesticide-specific information necessary to assist emergency medical services personnel.~~

~~(4)~~

~~(1) Protocols for requesting and providing immediate access to pesticide-specific information necessary to assist emergency medical services personnel in identifying pesticides that may be causing a pesticide drift exposure incident and appropriate treatments.~~

(2) Protocols to delineate specific agency responsibilities and the process for responding to calls, notifying residents, and coordinating evacuation, if needed.

~~(5)~~

(3) Protocols to establish emergency shelter procedures and locations to be used in the event evacuation is needed.

~~(6)~~

(4) Protocols to access services in all languages known to be spoken in the affected area in accordance with Section 11135 of the Government Code.

~~(7)~~

(5) Protocols to ensure access to health care within 24 hours of the exposure and up to a week after the exposure.

~~(c) County health officers shall develop or amend the local hazardous materials response plans to specifically address pesticide drift exposure and to incorporate provisions conforming the plans to the protocols.~~

~~(d) By June 1, 2006, all counties shall submit tentative plans for compliance with this chapter to the office for approval of the pesticide drift component.~~

~~(e) By January 1, 2007, all counties shall implement the approved pesticide drift component of their emergency response plans pursuant to this chapter.~~

~~105235. (a) As a prelude to the statewide implementation of the pesticide application registry protocols, the office and the~~

~~(c) The CUPA or administering agency shall amend the area plan for emergency response, pursuant to subdivision (c) of Section 25503, to specifically address pesticide drift exposure and to incorporate provisions conforming the area plans to the protocols of subdivision (b).~~

~~(d) By July 1, 2006, or upon review of the area plan, whichever is sooner, all CUPAs or administering agencies shall have incorporated a pesticide drift component into their area plans.~~

~~(e) The agency shall recover its costs related to this section from~~

~~105235. (a) The department in conjunction with county agricultural commissioners shall establish a pesticide application public accessibility pilot program of online posting of notices of intent and notices of completion for fumigant applications.~~

(b) The accessibility pilot shall be accessible to the department, the commissioners, county environmental health, and emergency medical personnel and the general public with some mapping capacity to enable agencies to determine if any fumigant applications are located within several miles of a complaint of illness, odor, or other indicators of pesticide drift.

(c) The accessibility pilot shall include an Internet site and a 24-hour accessible telephone hotline for contacting the applicator listed on the notice of intent.

(d) The accessibility pilot shall take place in the top 15 counties with *the* highest use of soil fumigants.

(e) The department shall implement the accessibility pilot by September 1, 2005.

105236. (a) There is hereby imposed a *drift* fee on the first point of sale on all of the following:

(1) Manufacturers and other persons who directly produce any *restricted use* pesticide for application in this state.

(2) Any business or person who is in nonretail business and who distributes within this state any pesticide for application in this state.

(b) ~~The office in consultation with the~~ department shall, by regulation, establish an appropriate fee schedule to be assessed on manufacturers and distributors.

~~(c) The program implemented pursuant to this chapter shall be fully supported from the fees collected pursuant to this chapter.~~

(c) Notwithstanding the scope of activity mandated by this chapter, in no event shall this chapter be interpreted to require services necessitating expenditures in any fiscal year in excess of the fees, and earnings therefrom, collected pursuant to this chapter. Except for startup activities initially funded from loans as set forth in Section 105239, this chapter shall be implemented only to the extent that fee revenues are available for expenditure for purposes of this chapter. ~~The office-~~department shall not spend more than it collects from the *drift* fees and the earnings in implementing this chapter including repayment of startup loans.

(d) To the maximum extent practicable, the *drift* fees shall be assessed on the basis of a pesticide's ~~present responsibility for the toxic effects of pesticide drift exposure.~~ *responsibility for pesticide drift exposure. The drift fees shall be set in an amount*

1 *necessary to fund the department's costs of regulating the drift*
2 *caused by restricted use pesticides.*

3 (e) No fee shall be assessed upon any retailer of pesticides.

4 ~~(f) The office may collect the fees imposed pursuant to this~~
5 ~~chapter or may contract with the State Board of Equalization or~~
6 ~~another state department or agency for collection of fees due under~~
7 ~~this chapter.~~

8 ~~(g)–~~

9 (f) The annual fee assessment shall be adjusted by the ~~office~~
10 ~~department~~ to reflect the increase in the annual average of the
11 California Consumer Price Index, as recorded by the Department
12 of Industrial Relations, for the most recent year available.

13 ~~(h)–~~

14 (g) No fee shall be assessed upon a party if that party
15 demonstrates to the ~~office's–department's~~ satisfaction that the
16 party merits an exemption from this chapter because the party's
17 conduct did not contribute in any manner to the toxic effects of
18 pesticide drift exposure.

19 ~~(i) The office~~

20 (h) *The department* shall not collect fees pursuant to this
21 chapter in excess of the amount reasonably anticipated by the
22 ~~office–department~~ to fully implement ~~this chapter–Sections~~
23 *105232 and 105233*. In no fiscal year shall the ~~office–department~~
24 collect more than ____ dollars (\$____) in fees, as adjusted
25 pursuant to subdivision ~~(g)~~ (f).

26 ~~(j) The office~~

27 (i) *The department* shall conduct a review every three years,
28 beginning January 1, 2008, to determine the appropriate levels for
29 assessing the fee pursuant to this chapter.

30 ~~105237. (a) The Pesticide Drift Exposure Prevention and~~
31 ~~Response Fund is hereby established within the State Treasury.~~

32 ~~(b) All fees collected pursuant to this chapter shall be deposited~~
33 ~~into the fund as set forth in subdivision (d). All interest earned on~~
34 ~~the moneys that have been deposited into the fund shall be retained~~
35 ~~in the fund and credited to the appropriate account as set forth in~~
36 ~~subdivision (d).~~

37 ~~(c) Notwithstanding Section 13340 of the Government Code,~~
38 ~~all moneys in the fund are hereby continuously appropriated to the~~
39 ~~office exclusively for the purposes of this chapter as set forth in~~
40 ~~subdivision (d).~~

~~(d) (1) The Medical Reimbursement Account is hereby established within the fund. From all fees collected pursuant to this chapter, an amount necessary to fully reimburse all claims for emergency response and health care provider services under Section 105231 as determined by the office shall be deposited annually into the Medical Reimbursement Account, but not less than _____ percent of the total fees collected annually pursuant to this chapter. All funds in the Medical Reimbursement Account are to be used exclusively for the costs set forth in this paragraph.~~

~~(2) The Education and Administration Account is hereby established within the fund. From all fees collected pursuant to this chapter, an amount necessary to fully reimburse all state and local agencies from public education and health care provider education and training activities and other program, administrative, and compliance costs under this chapter, including, but not limited to, reimbursement of state agency costs and state-mandated local costs pursuant to Section 105238, shall be deposited annually into the Education and Administration Account, but not less than _____ percent of the total fees collected annually pursuant to this chapter.~~

105237. (a) All fees collected pursuant to this chapter shall be deposited into the Education and Administration Account which is established within the fund, and all interest earned on the moneys that have been deposited into the account shall be retained in the account.

(b) All funds in the Education and Administration Account are to be used exclusively for the costs set forth in this paragraph, forth in Sections 105232 and 105233.

(c) Notwithstanding Section 13340 of the Government Code, all moneys deposited into the Education and Administration Account pursuant to subdivision (b) are hereby continuously appropriated to the department exclusively for the purposes set forth in subdivision (b).

~~105238. The office-department shall enter into interagency agreements with the department-office, the agency, the State Department of Health Services, and the Emergency Medical Services Authority to annually pay those agencies, from moneys within the fund, their share of the state costs of administering this chapter, and shall enter into reimbursement agreements with local agencies to annually reimburse those agencies, from moneys~~

1 within the fund, for their state-mandated local costs of
2 administering and complying with this chapter.

3 105239. (a) ~~(1)~~—It is the intent of the Legislature, in
4 subsequent legislation, to appropriate to the Controller from the
5 General Fund the sum of ____ dollars (\$____) for deposit into the
6 Education and Administration Account within the fund for
7 allocation as a loan, to the office for the purposes of adopting
8 regulations to establish the fee schedule authorized by this chapter
9 and for startup costs related to implementing this chapter.

10 ~~(2)~~—

11 (b) It is the intent of the Legislature that the office fully repay
12 the amount of this loan with interest at the pooled money
13 investment rate, from fees collected pursuant to this chapter.

14 ~~(b) It is the intent of the Legislature, in subsequent legislation,~~
15 ~~to establish penalties related to violation of this chapter, and to~~
16 ~~apply the proceeds to replenish the Medical Reimbursement~~
17 ~~Account.~~

18 105240. The adoption, amendment, or repeal of a regulation
19 for implementing this chapter, including, but not limited to, fee
20 assessment and collection, and subsequent amendments or
21 adjustments authorized by this chapter, are hereby deemed to be
22 emergency regulations necessary for the immediate preservation
23 of the public peace, health, and safety or general welfare.
24 Regulations adopted, amended, or repealed pursuant to this
25 chapter are hereby exempted from the rulemaking provisions of
26 the Administrative Procedure Act (Chapter 3.5 (commencing with
27 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
28 Code). However, upon adoption, the regulation, amendment, or
29 repeal shall be filed with the Secretary of State and printed in the
30 California Code of Regulations.

31 SEC. 2. Notwithstanding Part 7 (commencing with Section
32 17500) of Division 4 of Title 2 of the Government Code,
33 reimbursement of local costs mandated by this act shall be made
34 ~~by the Office of Environmental Health Hazard Assessment from~~
35 ~~by the Department of Pesticide Regulation from funds in the~~
36 ~~Education and Administration Account within the Pesticide Drift~~
37 ~~Exposure Prevention and Response Fund, pursuant Department of~~
38 ~~Pesticide Regulation Fund, pursuant to reimbursement~~
39 agreements entered into with local agencies, under Chapter 3.5

1 (commencing with Section 10523) of Part 5 of Division 103 of the
2 Health and Safety Code.

3 However, notwithstanding Part 7 (commencing with Section
4 17500) of Division 4 of Title 2 of the Government Code, if the
5 Commission on State Mandates determines that this act contains
6 other nonreimbursed costs mandated by the state, reimbursement
7 to local agencies and school districts for those costs shall be made
8 pursuant to Part 7 (commencing with Section 17500) of Division
9 4 of Title 2 of the Government Code. If the statewide cost of the
10 claim for reimbursement does not exceed one million dollars
11 (\$1,000,000), reimbursement shall be made from the State
12 Mandates Claims Fund.

